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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	Civil No. 2:08 CV 23 DB
Petitioner,	:	<b>REPORT &amp; RECOMMENDATION</b>
vs.	:	
NEIL D. NELSON,	:	Honorable Dee Benson Magistrate Judge Paul M. Warner
Respondent.	:	

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The United States of America filed a petition to enforce two September 25, 2007 IRS Summonses (“the Summonses”) against Neil D. Nelson (“Respondent”) pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). The Honorable Dee Benson issued an Order to Show Cause (“OTSC”) on January 14, 2008, which referred this matter to Magistrate Judge Paul M. Warner for a hearing scheduled for March 5, 2008.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed this court to convene a hearing on March 5, 2008, at 10:00 a.m. to determine whether Respondent has shown cause for failure to comply with the Summonses. Respondent did not provide any written response prior to the March 5, 2008 hearing.

This court convened a hearing at the appointed date and time, at which Respondent appeared pro se, and the United States appeared through Jared C. Bennett, Assistant United States Attorney.

Based on the Petition and the exhibits attached thereto, and the representations made at the hearing, this court reports the following:

1. The United States has carried its burden of proof to enforce the Summonses. Through the Summonses and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summonses. Respondent does not contest enforcement of the Summonses and agrees to comply therewith.

Consequently, this court recommends that:

1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summonses; and


2. The District Court order Respondent to provide the information required by the Summonses to the IRS no later than 30 days after the District Court adopts this Report and Recommendation with the possibility of a 15-day extension if Respondent has contacted the Revenue Officer assigned to this case prior to the 30th day and is making diligent efforts toward complying with the Summonses.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections

within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of this court's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

DATED this 5th day of March, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER, Magistrate Judge  
United States District Court